

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

NELLIE L. KING, THE LAW OFFICES OF  
NELLIE L. KING P.A.

Plaintiff,

Case No.: 2019CA011150XXXXMB  
CIRCUIT CIVIL DIV: AA

vs.

CITY OF DELRAY BEACH, FLORIDA ,  
Defendant.

**MOTION TO INTERVENE**

NICOLE GUERRIERO, in accordance with Rule 1.230, Rules of Civil Procedure, files this Motion for entry of an Order allowing her to intervene in this proceeding which pertains to her *personal property* in the possession of the City of Delray Beach Police Department and to have a status that is not subordinate to the other parties in this proceeding. In support of this motion, NICOLE GUERRIERO states:

1. Back in September 2017, NICOLE GUERRIERO made an incident report to the Delray Beach Police Department in reference to stalking. The report pertained to her soon to be ex-spouse, Bethany Fedorenchik who had been engaged in a continuous pattern of sending harassing and threatening text messages and emails to her which caused her to be in fear. Although Ms. Guerriero had provided to the Delray Beach Police Department print-outs of some of the text message and email exchanges between herself and Ms. Fedorenchik, in order to have a more accurate account of the exchanges, a request to extract all the text messages between the two from her personal phone was made by the Delray Beach Police Department. Ms. Guerriero

consented to the Delray Beach Police Department extracting from her phone the text messages between herself and Ms. Fedorenchik. This was the *only consent given* and the *only consent requested*. Over 44,000 text messages between the two of them were extracted spanning from March 2017 up to December 2018 and placed on a thumb-drive by the Delray Beach Police Department.

2. In March 2019, NICOLE GUERRIERO applied for and was given a Temporary Restraining Order against Ms. Fedorenchik in connection with the stalking report she filed with the Delray Beach Police Department. Also in March 2019, the Palm Beach County State Attorneys Office, after reviewing the case, filed an Information against Ms. Fedorenchik charging her with stalking.

3. Nellie King, Esq. filed Notices of Appearance on behalf of Ms. Fedorenchik in both the TRO case and the criminal case.

4. The TRO hearing was set for May 21, 2019. Shortly after the hearing commenced, an agreement was reached among the parties and the TRO was dismissed. At this point the only thing pending pertaining to the stalking offense was the criminal case which was set for arraignment on May 28, 2019.

5. On May 23, 2019, NICOLE GUERRIERO was made aware that, unbeknownst to her, along with the thumb drive that contained the 44,000 text messages between herself and Ms. Fedorenchik, there was another thumb drive in the possession of the Delray Beach Police Department which contained all the text messages and attachments contained on her phone, not just between herself and Ms. Fedorenchik but every text messages (even deleted messages) found on her phone dating back to 2008. This thumb drive contained messages that not only were *personal* but also *confidential*, including but not limited to; messages from medical

professionals pertaining to Ms. Guerriero, messages to and from legal counsel, as well as messages regarding her 10 year old daughter's adoption. Ms. Guerriero NEVER consented to these text messages being downloaded, reviewed or retained by Delray Beach Police Department or anyone. Ms. Guerriero immediately sent a letter to the Delray Beach Police Department notifying them that she had *never given consent* to the complete search of the contents of her phone nor the retention of such and requesting the thumb drive be returned to her immediately. (See attached May 23, 2019 letter).

6. On the same day she sent her first letter, Ms. Guerriero was advised that the thumb drive containing all the text messages on her phone, which she was demanding to be returned, was going to be turned over to the evidence custodian at the Delray Beach Police Department. It should be noted that up until this time the thumb drive had not been turned over to the evidence custodian. Due to the actions of the Delray Beach Police Department turning over this thumb drive to the evidence custodian, Ms. Guerriero feared all the private, confidential, privileged information contained on that thumb drive would be mistakenly released in discovery in the criminal case. Ms. Guerriero immediately contacted the Assistant State Attorney who had filed the criminal case and withdrew cooperation and requested the case be nolle prossed.

7. The State Attorney's Office filed a Nolle Prossse on May 24, 2109, prior to arraignment hearing. The State Attorney's Office also filed a disposition letter with the Delray Beach Police Department releasing all the evidence.

8. On May 25, 2019, Ms. Guerriero sent another letter to the Delray Beach City Attorney's Office again requesting the thumb drive be released and returned to her. Ms. Guerriero was advised that due to the fact there was an outstanding public records request made

by Ms. King's investigator that was being reviewed and researched, the thumb drive could not be released without a Court Order. (See attached May 25, 2019 letter)

9. On May 29, 2019, Ms. Guerriero sent yet another letter to the Delray Beach City Attorney's Office asserting her position that the thumb drive contained personal, private confidential information that she never consented to the Delray Beach Police Department obtaining or retaining. (See attached May 29, 2019 letter).

10. On June 12, 2019 Ms. Guerriero was advised that the City of Delray Beach had concluded that the thumb drive containing all her private, personal and privileged text messages was not a 'public record' for the purposes of the Chapter 119 request made by Ms. King's investigator and that it would not be released in response to their request.

11. On July 19, 2019, NICOLE GUERRIERO filed a Motion for Return of Property in the closed criminal stalking requesting that the thumb drive be returned to her. (See attached Motion)

12. In response to Ms. Guerriero's motion, Ms. King moved to strike the request claiming the thumb drive was subject to a public records request. (See Motion to Strike)

13. In return, Ms. Guerriero filed a response to Ms. King's Motion to Strike and the matter was set for a hearing on September 13, 2019. (See Response Motion)

14. In the late afternoon of September 12, 2019, the day before the hearing on the Motion to Return Property, Ms. Guerriero was notified by the Delray Beach City Attorney that Ms. King had filed a Complaint For Writ of Mandamus regarding the thumb drive containing all the text messages, had served the complaint on the City Attorney and that it was set for a hearing on October 2, 2019. At no time did Ms. King notify Ms. Guerriero of this complaint despite being fully aware that the property was her personal property, that Ms. Guerriero had not only

filed a motion for the return of property but had coordinated the date of the hearing with Ms. King and the City of Delray.

15. Knowing full well that Ms. Guerriero had not only requested the thumb drive be released to her but that she had also asserted that the contents had been downloaded and retained without her consent, and contained private, privileged personal information Ms. King neglected to make mention of such in her Complaint for Writ nor notify her of the complaint which she has a possessory interest in.

16. The subject of this Writ is NICOLE GUERRIERO'S personal property, which nevertheless was obtained without consent. NICOLE GUERRIERO, has an undeniable direct interest in this pending litigation. Her interest, moreover her constitutional rights, will be directly and seriously impacted by this litigation and final judgment. Consequently, NICOLE GUERRIERO is not only an appropriate party to this litigation but her status *should not* be subordinate to the other parties.

### ARGUMENT

#### Privacy Interest

Putting aside the irrefutable fact that the complete contents of her personal cellphone were obtained and retained without her consent, there is a clear privacy interest that is triggered by the nature of the contents of the particular information sought to be disclosed. The information found on this thumb drive is private, confidential, privileged which both the United States Constitution and Article I, section 23 of the Florida Constitution protects. Ms. Guerriero has a reasonable expectation of privacy not only in all the information found on her phone, which includes deleted text messages, but also an expectation that they would not be disclosed. At no time was she aware that the entire contents of her phone had been obtained and retrieved.

The minute Ms. Guerriero was made aware that her privileged, protected property was in their possession, she immediately put the Delray Beach Police Department on notice that she had never consented and demanded the release of the thumb drive.

When the Court addresses whether the thumb drive should be disclosed under Chapter 119, the nature and character of the property should be taken into consideration, as well as how the property was obtained. There are over 100,000 text messages on the thumb drive and all of them are clothed with a reasonable expectation of privacy. Moreover, many of the messages contain privilege, confidential, personal information for which there is absolute protection that was never waived by Ms. Guerriero, whether directly or implied.

It should also be noted that unlike the text messages between Ms. Guerriero and Ms. Fedorenchik, which were germane to the stalking offense, absolutely no consent was obtained by Ms. Guerriero or any individual whose text messages are now on the thumb drive in the possession of the Delray Beach Police Department. In any other situation where there is no consent, the only means in which the information found on the thumb drive could have been obtained by the Delray Beach Department would be a Court approved search warrant. Now a private citizen is seeking the disclosure of this information, which was obtained without consent and without a search warrant – clearly the constitutionally protected privacy rights of Ms. Guerriero far outweigh any interest the plaintiff has and the Court should not permit disclosure.

**Not a Public Record**

Contrary to the City of Delray Beach's determination, Ms. King asserts that the thumb drive containing over 100,000 personal, privileged confidential information falls under the definition of a 'public record' for the purposes of Chapter 119. According to Chapter

119.011(12):

“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The City of Delray Beach has asserted in their letter to Ms. King that the thumb drive with all the messages taken from the personal cellphone between 2008 to 2018 was not made or received in connection with the criminal investigation and that it was only the thumb drive with the messages between Ms. Guerriero and Ms. Fedorenchik substantiating the stalking offense. To say that the entire contents of the personal cellphone is/was connected to the investigation is not a valid argument. At no time did the investigation into the stalking offense of Ms. Fedorenchik involve the other information on the personal cellphone. The information was not relevant nor necessary for the investigation. The only information requested by the Delray Beach Police Department was the 44,000 text messages between Ms. Guerriero and Ms. Fedorenchik. The cellphone and its contents were both never considered evidence. Notwithstanding, why would the victim Ms. Guerriero who was being harassed, threatened and put in fear want (or even consent to) her personal, private, privileged information being obtained, retained or disclosed to anyone? It defies logic that under the circumstances that Ms. Guerriero would have consented. And it should not be forgotten that Ms. Guerriero was never informed that this information was even obtained and when she was notified she clearly gave notice that she had not consented.

The mere fact the information is in the possession of the Delray Beach Police Department does not in of itself make it a public record and therefore must be disclosed. Again, the nature of

the information sought is private, privileged and confidential which was obtained without consent. Private and privileged information does not become public record by virtue of the fact it is in a government agency's possession. *Times Publ'q Co. v. City of Clearwater*, 830 So.2d 822 (Fla. 2<sup>nd</sup> DCA 2002); *Hill v. Prudential Ins. Co.*, 701 So.2d 1218 (1<sup>st</sup> DCA 1997).

### **The Objective of Chapter 119**

The objective of Chapter 119 is to assure the public has a means of knowing what the government is doing and to allow for opening governmental processes to public inspection. Although Chapter 119 allows for inspection and disclosure, the right of inspection does not extend to all public records due to the fact some may be confidential and privileged. *Wisher v. News-Press Publishing Co.*, 310 So.2d 345 (FLA. 2<sup>nd</sup> DCA 1975). There is no doubt, the information on the thumb drive in this case falls under those parameters. Whereas Chapter 119 is directed at assuring people have the means of knowing what their government is doing, the right to know must occasionally be circumscribed when the potential dangers and damages far outweigh the possible benefits. *Wisher v. News-Press Publishing Co., Id.*

Undoubtedly, the disclosure of Ms. Guerriero's personal, private, privileged, confidential information will have a serious and detrimental effect. It should not be lost on this Court, this began as a stalking case wherein not only was a Temporary Restraining Order granted by a judge in Circuit Court but also criminal charges were filed by the State Attorneys Office and a warrant issued by yet another judge in County Court. Now the attorney for the woman who was charged with stalking is seeking the private, privileged, confidential information of the victim, despite the fact the TRO and the criminal case are closed.

### Access to Public Records versus Privacy Rights

The enactment of Chapter 119 created a ‘right’ for the public to inspect public records. The competing interest in this case is Ms. Guerriero’s privacy rights and there can be no argument that the information sought to be disclosed is personal/private and there is a reasonable expectation of privacy of nondisclosure. When comparing the ‘right’ to access public records provided in Chapter 119 to the constitutional right of privacy, which would be violated if the thumb drive is disclosed, there should be no hesitation in concluding Ms. Guerriero’s privacy rights outweigh. To find otherwise, one would have to conclude that the public interest in open government outweighs a person’s privacy interest and allows for the invasion of such with no regard.

Open government and citizen awareness may be a compelling state interest but it is far less superior than one’s constitutionally protected privacy rights. In this particular case, due to the nature of the information sought, it is not enough that Chapter 119 generally serves an interest in public disclosure, there must be a demonstration of a compelling state interest in the public disclosure of this particular information in which otherwise afforded privacy protection. *Byron, Harless, Schaffer, Reid & Assoc v. State*, 360 So.2d 83, (Fla. 1<sup>st</sup> DCA 1978).

Turning to the competing interests present in this case, the right to inspect public records in order to ensure government/agencies remain accountable to the public versus the privacy rights of Ms. Guerriero that will be encroached, it is inescapable but to conclude there is a less compelling state interest in disclosure. Although Ms. King argues that the reason for requesting a public record is irrelevant, this information not only was obtained without consent, it is constitutionally protected and a compelling interest which outweighs the violation of privacy

rights should be demonstrated before this Court allows disclosure.

What gave rise to all of the public records requests made by Ms. King was a criminal investigation of stalking against her client. At no time was the information she now seeks apart of investigation, used in the application for the TRO or used in the review and filing decision by the State Attorneys Office. Currently, there is no pending TRO, no pending criminal case. All matters related to the investigation conducted by Delray Beach Police Department have been closed for well over 90 days yet Ms. King still seeks Ms. Guerriero's private, confidential, privileged information. In light of the nature and circumstances of the case and the events leading up to the filing of this Writ, it is hard not to question the motives behind Ms. King's continued pursuit of Ms. Guerriero's personal property, who she neglected to mention in her complaint nor provide notice to despite knowing she had an undeniable possessory interest.

### CONCLUSION

Ms. Guerriero has no other remedy other than to intervene in this proceeding to secure the return of her personal, private, privileged, confidential information. She has exhausted all other means and respectfully requests the Court allow her to intervene and that her status not be subordinate to the other parties.

Although it is difficult to ignore the fact that the information on the thumb drive was obtained without knowledge or consent which in and of itself should be sufficient to find in favor of nondisclosure; putting that aside it still should not be deemed a public record. The only data received in connection with the criminal investigation was the 44,000 text messages between victim Ms. Guerriero and her accused stalker Ms. Fedorenchik. Simply being in the possession of the Delray Beach Police Department in and of itself does not transform the information on the

thumb drive into a public record subject to disclosure, again this information is private, confidential and privileged. The constitutionally protect privacy rights afforded to Ms. Guerriero far outweigh the ‘right’ to access public records to ensure accountability of government agencies. Disclosure of her private information under the circumstances in this case would result not only in a violation of her privacy rights but also cause serious and detrimental harm.

WHEREFORE, NICOLE GUERRIERO respectfully request this Court grant her motion to intervene, allow her the opportunity to be heard in this matter and DENY Plaintiff's request for disclosure.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was delivered by email to Nellie King, Esq., Joseph Sconzo, Esq., Lynn Gelin Esq., and Lawonda Warren, Esq. on this 19th day of September, 2019.

Respectfully submitted,

/s/ Nicole Guerriero  
Nicole Guerriero  
Nikoli788@aol.com

May 23, 2019

Lynn Gelin, Esq.  
City Attorney's Office  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Delivered via email

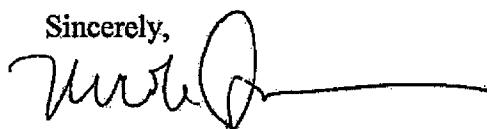
*Re: Delray Beach Police Department Case 17014767 Public Records Request*

Dear Ms. Gelin:

Please let this letter serve as notice of objection to the review and release of the contents of the complete search performed on my personal iPhone done by Delray Beach Police Department back in January 2019 under case number 17104767. I was never informed that the entire content of my iPhone would be retained by the Delray Beach Police Department. I was only advised that text messages between my number and the number of the stalking suspect being investigated would be retained. I never gave consent for the Delray Beach Police Department to retain any messages or information from my phone outside of those text messages and I only recently was made aware that they did. The information retained, without consent, by the Delray Beach Police Department contains private and confidential information and disclosure of such will violate my privacy rights. The information was obtained during the course of a criminal investigation for which I was the victim, I was not operating in the capacity of a law enforcement officer at the time I provided my personal iPhone to the Delray Beach Police Department. Again, the consent was solely for the gathering of text messages between my phone number and the phone number of the suspect. I am objecting to any action being taken in the form of review for disclosure and also any disclosure of the contents of the complete iPhone search. I am also requesting that the thumb drive with the complete contents of my personal iPhone be returned to me as well as any and all forms in which that information exists.

Thank you for your attention to this sensitive matter. Please contact me at the number listed below to confirm receipt of this letter.

Sincerely,



Nicole Guerriero  
561-767-6144

May 25, 2019

Lynn Gelin, Esq.  
City Attorney's Office  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444  
Delivered via email

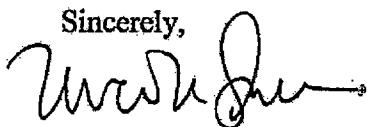
*Re: Delray Beach Police Department Case I7014767 Public Records Request*

Dear Ms. Gelin:

On Friday, May 24, 2019, the State Attorney's Office filed a Nolle Prossse in Delray Beach Police Department case 17-14767. Pursuant to the Delray Beach Police Department General Order 2220, subsection 2.1 which states: "Victim/Witness property shall be retained in evidence only when necessary for criminal investigation and prosecution purposes. Otherwise, it shall be returned to the owner" I am requesting that my personal property, specifically the thumb drive with the complete search of my personal iPhone be returned to me. As I mentioned in my previous letter to you, the complete contents of my personal iPhone were retained without my consent and contains personal private and confidential information. For the above stated grounds I am requesting the contents of the thumb drive be returned to me immediately without any review of the contents and that no copy of the information be copied and retained.

Thank you for your attention to this sensitive matter. Please contact me at the number listed below to confirm receipt of this letter.

Sincerely,



Nicole Guerrero  
561-767-6144

May 29, 2019

Lynn Gelin, Esq.  
City Attorney's Office  
200 N.W. 1<sup>st</sup> Avenue  
Delray Beach, FL 33444

Re: *Delray Beach Police Department Case 10-I4767 Public Records Request*

Dear Ms. Gelin:

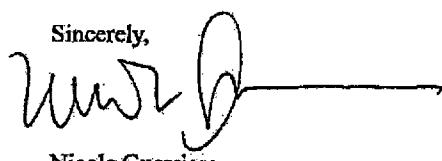
To follow up with my letters I sent to you regarding the contents of my personal iPhone which the Delray Beach Police Department has in their possession without my consent, I wanted to reiterate my request for the content to be returned and provide additional support for my position.

Although you may conclude that the contents of the thumb drive is a 'public record' for the mere fact it is in the possession of the Delray Beach Police Department, that is not necessarily consistent with some of my research into the matter. Even putting aside the fact that the complete contents of my personal iPhone was obtained without my knowledge and without my consent, it still contains private, privileged, personal information for which both the United States Constitution and Article I, section 23 of the Florida Constitution protects. There should be no argument that the information on my personal iPhone (that was obtained without my consent) is private information. Private and privileged information does not become public record by virtue of the fact it is in a governmental agency's possession. (*Times Publ'q Co. v. City of Clearwater*, 830 So.2d 844, 2<sup>nd</sup> DCA 2002; *Hill v. Prudential Ins. Co.*, 701 So.2d 1218, 1<sup>st</sup> DCA 1997). Chapter 119's objective is to assure that the public has a means of knowing what the government is doing and to allow for opening governmental processes to public inspection. Although it allows for inspection and disclosure, the right of inspection does not extend to all public records due to the fact some may be confidential and privileged, which the contents of my personal iPhone fall under. (*Wisher v. News-Press Publishing Co.*, 310 So.2d 345, 2<sup>nd</sup> DCA 1975). The public's right to know, although it may be considered a right, it is a statutory right whereas my fundamental right to privacy is a constitutional right. It is not enough that Chapter 119 serves an interest in public disclosure, there is no compelling interest in the public's knowledge of my personal, private, privileged information (that was obtained without consent) that can outweigh my constitutional privacy rights. (*Byron, Harless, Schaffer, Reid, & Assocs. v. State*, 360 So.2d 83, 1<sup>st</sup> DCA 1978); *Atwell v. Sacred Heart Hospital*, 504 So.2d 1367, 1<sup>st</sup> DCA 1987).

It must still be taken into consideration that there was no consent for the complete contents of my personal iPhone to be seized, searched nor retained by the Delray Beach Police Department. That in and of itself should bar any disclosure of the information. It was not evidence in the investigation nor the resulting criminal case that is now closed. I also ask that when reviewing this matter, please keep in mind I was not acting in the capacity of a law enforcement officer or an agent of the Delray Beach Police Department. I was a victim reporting a crime to a law enforcement agency in the capacity of a private citizen.

In light of all of the above, I am requesting the contents of my personal iPhone be released to me immediately without any further action taken by the Delray Beach Police Department and/or the City of Delray Beach. Please contact me to confirm receipt of this letter.

Sincerely,



Nicole Guemiero

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL  
CIRCUIT, CRIMINAL DIVISION, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

State of Florida,  
*Plaintiff,*

vs.

Bethany Fedorenchik,  
*Defendant.*

Case Number: 2019-MM-003721-AXXX-MB  
DIVISION: DVTD

**MOTION FOR RETURN OF PERSONAL PROPERTY**

COMES NOW the victim, Nicole Guerriero, in the above-captioned case and files this motion requesting that the Court issue an Order directing the Delray Police Department to return all personal property in their possession under DBPD Case No. 17-14767. As grounds to support this request, the victim states as follows:

1. An Information charging Stalking was filed in this case on March 27, 2019. The police case number in support of the criminal charges is DBPD 17-14767.
2. On May 24, 2019 a Nolle Prossse was entered in the above-captioned case.
3. The Delray Beach Police Department has personal property of the victim, Nicole Guerriero in their possession. The case having been closed, the victim seeks return of all personal property in the possession of the Delray Beach Police Department.

WHEREFORE the victim, Nicole Guerriero, respectfully requests this Court to issue an Order directing the Delray Beach Police Department to release all her personal property in their possession under DBPD Case No. 17-14767.

I do certify that a copy hereof has been furnished to Lynn Gelin, Esq., City of Delray Beach Attorney, LaWonda Warren, Esq., Assistant City Attorney/Police Legal Advisor by electronic mail on this 19th day of July 2019.

Respectfully submitted,

By: /s/ Nicole Guerriero  
Nicole Guerriero  
Nikoli788@aol.com

IN THE COUNTY COURT OF  
THE FIFTEENTH JUDICIAL  
CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

STATE OF FLORIDA

DIVISION: DVTD  
CASE NO: 2019MM003721AXX

vs.

BETHANY FEDORENCHIK,  
Defendant

**MOTION TO STRIKE MOTION FOR RETURN OF PERSONAL PROPERTY  
FILED BY NON-PARTY NICOLE GUERRERO**

COMES NOW the Defendant, BETHANY FEDORENCHIK, by and through undersigned counsel, NELLIE L. KING, and hereby files this Motion to Strike Motion for Return of Personal Property Filed by Non-Party Nicole Guerriero. As grounds therefore, the undersigned states:

1. The Defendant was charged with Stalking as per Fla. Stat. Sect 784.048(2).
2. The State Attorney filed a Nolle Prossse on May 24, 2019.
3. Nicole Guerriero, a witness in this case, filed a Motion for Return of Personal Property on July 19, 2019.
4. Ms. Guerriero is a non-party to this case. Ms. Guerriero seeks the return of personal property. Although the motion fails to specifically identify the personal property Ms. Guerriero seeks to be returned to her, she presumably seeks the return of copies of electronic evidence or data collected in this matter. This is not tangible property which belongs to Ms. Guerriero like a firearm, jewelry, or a cell phone. This duplicated evidence was properly collected and listed in this case. This copy of electronic evidence is a public

record and cannot be removed or destroyed pursuant to the dictates of Florida Chapter 119, "Florida's Sunshine Law."

5. Ms. Guerriero filed a Notice of Hearing on July 19, 2019, setting the Motion for Return of Personal Property on July 26, 2019, at 8:00 a.m. before this Honorable Court.
6. Non-party Nicole Guerriero did not contact the parties to this action – the State of Florida, nor the undersigned as a representative of the Defendant – regarding their respective positions regarding Ms. Guerriero's request. Nor did non-party Nicole Guerriero contact either party regarding the scheduling of Ms. Guerriero's motion.
7. On July 23, 2019, this Honorable Court struck Ms. Guerriero's Notice of Hearing for improperly scheduling the motion without proper notice to the parties.
8. Ms. Guerriero then scheduled the hearing on her motion for August 5, 2019, again without coordinating the date with the parties.
9. Ms. Guerriero now indicates in communication to the Court that the Defendant should not be notified nor heard on the request. Ms. Guerriero fails to convey the entire circumstance behind her request, including the fact that the electronic evidence she seeks is currently the subject of a Chapter 119 request, as well as potential civil litigation which may ensue for non-production. Again, these attempts by Ms. Guerriero seeks to skirt the dictates of the Florida Sunshine Law.

10. The Defendant requests an opportunity to be heard on this request and again asserts that this motion should be stricken unless all parties are notified and available for hearing.

11. There is no lawful basis for the Court to grant this request and undersigned counsel is opposed to Ms. Guerriero's motion.

12. Undersigned counsel is unavailable on August 5, 2019.

**WHEREFORE**, based on the foregoing grounds, the Defendant respectfully request that this Court grant this Motion to Strike Motion for Return of Personal Property Filed by Non-Party Nicole Guerriero.

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished via the Florida E-Portal to the Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, FL 33401, at CCDOVE@SA15.ORG; Non-Party Nicole Guerriero via email at Nikoli788@aol.com; and counsel for the City of Delray Beach, Lawonda Warren, via email at WarrenL@mydelraybeach.com, on this 23rd day of July, 2019.

Respectfully submitted,

The Law Offices of Nellie L. King, P.A.  
319 Clematis Street, Suite 107  
West Palm Beach, FL 33401  
Tele.: 561-833-1084  
Fax: 561-833-1085  
Email: Nellie@CriminalDefenseFla.com

/s/ Nellie L. King  
NELLIE L. KING  
Fla. Bar No.: 0099562

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL  
CIRCUIT, CRIMINAL DIVISION, IN AND FOR PALM BEACH  
COUNTY, FLORIDA**

State of Florida,  
*Plaintiff,*

vs.

Bethany Fedorenchik,  
*Defendant.*

Case Number: 2019-MM-003721-AXXX-MB  
DIVISION: DVTD

**VICTIM NICOLE GUERRIERO'S RESPONSE TO MOTION TO STRIKE  
MOTION FOR RETURN OF PERSONAL PROPERTY**

COMES NOW the VICTIM, Nicole Guerriero, in the above-captioned case and files this response to the Motion to Strike Motion For Return For Personal Property. The VICTIM, Nicole Guerriero states as follows:

1. In her Motion to Strike, Ms. King refers to Nicole Guerriero as a Non-Party and a witness, this is a clear misrepresentation. Ms. Guerriero is the ***STALKING VICTIM*** in the above-captioned case, as noted in the Information that specifically states, "***BETHANY FEDORENCHIK.....did willfully, maliciously, and repeatedly follow, harass, or cyberstalk NICOLE LT GUERRIERO, contrary to Florida Statute 784.048(2).***" Ms. Guerriero, who is acting Pro Se, is an interested party and it is within her right to file a motion requesting her property be released and returned.
2. The Delray Beach Police Department has in their possession a thumb-drive that contains personal, private & privileged text messages/information that was retained without the VICTIM, Nicole Guerriero's knowledge or consent. This is the item the VICTIM, Nicole Guerriero is requesting to be released and returned.
3. On May 24, 2019, the State Attorney filed a Nolle Prossse in this case and sent a disposition letter to the Delray Beach Police Department indicating the case was closed and advising the Evidence custodian that the items retained were no longer needed.
4. Ms. King claims the thumb-drive is the subject of a Chapter 119 request made to the Delray Beach Police Department, however according to the City of Delray Beach this request has been closed and Ms. King was advised that the thumb-drive did not fall under Chapter 119 and would not be provided. So although the thumb-drive ***WAS*** the subject of a Chapter 119 request, Ms. King misrepresented the status of this request as being active when in fact it has been closed. Furthermore, it should be noted that Ms. King was advised that the thumb-drive would not be produced over 40 days ago and there has been no further action by Ms. King.

5. Ms. King leads the Court to believe that the VICTIM, Nicole Guerriero was being deceptive by not coordinating dates with all parties and communicating with such to obtain their respective position on the motion prior to scheduling the second hearing. Contrary to Ms. King's belief, the VICTIM, Nicole Guerriero was advised by the Judicial Assistant to merely file a Notice of Hearing and provide to all the parties, which is what occurred. At no time was the VICTIM, Nicole Guerriero, who is acting Pro Se, instructed to communicate with the parties and seek their position on the motion or coordinate dates. Moreover, the instructions found on the DV Divisional Instructions web page provides that the motion must be sent to the JA prior to contacting them for a hearing date and that "a copy of the motion and notice of hearing must be provided to the opposing party immediately." Nowhere are there instructions advising communication with the parties or coordinating dates is mandatory prior to scheduling a hearing.

6. The VICTIM, Nicole Guerriero, is requesting the Court to proceed with the Hearing on the Motion to Return Personal Property as filed. As proven in the above, the property is in the possession of the Delray Beach Police Department, NOT the Defendant, thus the issue raised in the motion lies between the Delray Beach Police Department and Ms. Guerriero. As such, the VICTIM in this closed case, Ms. Guerriero's attempt to obtain her personal property should not be hindered by Ms. King's unavailability.

WHEREFORE the victim, Nicole Guerriero, respectfully requests this Court to DENY the Defendant's Motion to Strike and allow the Motion to Return Personal Property to proceed on August 5, 2019.

I do certify that a copy hereof has been furnished to Lynn Gelin, Esq., City of Delray Beach Attorney, LaWonda Warren, Esq., Assistant City Attorney/Police Legal Advisor, Nellie King, Esq., Fatima Bachemin, Esq., by electronic mail on this 23rd day of July 2019.

Respectfully submitted,

By: /s/ Nicole Guerriero  
Nicole Guerriero  
Nikoli788@aol.com